

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:20 CV 160 MR WCM

CITY OF BREVARD, )  
 )  
 Plaintiff, ) ORDER  
 v. )  
 )  
 CDM SMITH INC., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

This matter is before the Court on Defendant's Motion to Dismiss (Doc. 3).

On July 1, 2020, Defendant filed the Motion to Dismiss seeking dismissal of Plaintiff's Complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Doc. 3, p. 1. Twenty-one days later, on July 22, 2020, Plaintiff filed its first Amended Complaint. Doc. 7.

"A party may amend its pleading once as a matter of course within ... 21 days after service of a motion under Rule 12(b)...." Fed. R. Civ. Pro. 15(a)(1)(B). Because Plaintiff had a right to amend the complaint within the time period provided by Rule 15(a)(1)(B), the Motion to Dismiss should be denied as moot.

See Thomas v. Cumberland County Board of Education, No. 5:10-cv-552, 2011 WL 3664891, at \*1 (E.D.N.C. Aug. 18, 2011) ("Because plaintiff had 'an absolute right to amend [her] complaint ... and need not [have sought] leave of

court to do so' her motion to amend must be ALLOWED. Defendant's motion to dismiss the original complaint is DENIED AS MOOT, without prejudice to renewal.") (quoting Galustian v. Peter, 591 F.3d 724, 730 (4th Cir. 2010) (modifications in Thomas).

**IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss (Doc. 3) is **DENIED AS MOOT**.

Signed: July 23, 2020



W. Carleton Metcalf  
United States Magistrate Judge

